IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.10639 OF 2004

M/s.Shriram Transport Finance
Co.Ltd. & Ors. ....Petitioners.

Vs.

Balasaheb Baburao Gavali & ors. ....Respondents.

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Mr.S.P. Bharti for the Petitioners.

Mr.A.B.Borkar for Respondent No.1.

Mr.A.H.Palekar, AGP for Respondent No.2.

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CORAM : DR.D.Y.CHANDRACHUD, J.

May 4, 2005.

P.C. :

1. Rule, by consent returnable forthwith. Counsel appearing on behalf of the Respondents waives service. By consent of Counsel and at their request taken up for hearing and final disposal.

2. The First Petitioner granted a hire purchase facility to the First Respondent for the

acquisition of a motor vehicle under the terms of an agreement dated 3rd May 2001. There were allegedly defaults on the part of the First Respondent in paying the instalments under the hire purchase agreement and the First Petitioner seized and took possession of the vehicle on 19th December 2002. The First Respondent filed a suit before the Civil Judge, Junior Division, Kolhapur on 17th June 2004 for an injunction restraining the First Petitioner from applying for a change in the Registration Book and for a mandatory order restoring possession to him. On 3rd July 2004 the First Petitioner filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 for referring the dispute to arbitration in view of the arbitration clause contained in the hire purchase agreement. On 2nd September 2004, the First Respondent filed an application before the Trial Court purportedly under Section 9 of the Act read with Section 151 of the Code of Civil Procedure, 1908, inter alia praying for possession of the vehicle. The application was dismissed by the Trial Court on 6th November 2004, but the Learned Trial Judge directed the First Petitioner to take effective steps for appointment of an Arbitrator on or before 26th November 2004. On 10th December 2004, an intimation was furnished by the First

Petitioner to the First Respondent of the appointment of Mr. P.P. Bafna, a retired District and Sessions Judge of Aurangabad as an Arbitrator. The First Respondent filed another application on 3rd December 2004 under Section 151 read with Order 39 Rules 1 and 2 of the Code of Civil Procedure and Section 9 of the Arbitration and Conciliation Act, 1996 for restoration of possession. That application was allowed by the impugned order dated 10th December 2004.

3. The ground on which the Trial Judge has allowed the application for restoration of possession is that the earlier order calling upon the First Petitioner to appoint an Arbitrator before 26th November 2004, was not complied with. In my view, since the Learned Trial Judge had dismissed an earlier application for a mandatory order on 6th November 2004, it was not either appropriate or proper to allow the very same relief which was sought, in a subsequent application. In any event, Counsel appearing on behalf of the Petitioners has drawn the attention of the Court to the communication of the First Petitioner dated 10th December 2004 (Exh.D) by which an intimation has been given to the First Respondent about the appointment of the Arbitrator. In these

circumstances, the impugned order dated 10th December 2004 is unsustainable and hence, is quashed and set aside. The petition is accordingly allowed. The Arbitrator is requested to dispose of the arbitral proceeding preferably within four months from the date on which a certified copy of this order is produced by either of the parties.

4. The petition is accordingly disposed of in the aforesaid terms. In the circumstances, there shall be no order as to costs.

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